IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15560 of 2003
With
SPECIAL CIVIL APPLICATION No. 3900 of 1997
With
SPECIAL CIVIL APPLICATION No. 9547 of 1996
With
SPECIAL CIVIL APPLICATION No. 4344 of 2000
With
SPECIAL CIVIL APPLICATION No. 7958 of 2000
With
SPECIAL CIVIL APPLICATION No. 13601 of 1993
With
SPECIAL CIVIL APPLICATION No. 12341 of 2000
With
SPECIAL CIVIL APPLICATION No. 8675 of 2000
With
SPECIAL CIVIL APPLICATION No. 8741 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VACHHOL DUDH UTPADAK SAHAKARI MANDALI LIMITED & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

Special Civil Application No.15560/2003

MR PRAKASH K JANI for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1 - 3.
MR HARIN P RAWAL for Respondent(s) : 4 – 5.

Special Civil Application No.3900/1997
MR BS PATEL for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1 – 2,
MR VH PATEL for Respondent(s) : 3.

Special Civil Application No.9547/1996
MR NK MAJMUDDAR for Petitioner(s) : 1,
MR AP RAWAL for Respondent(s): 1
MS ML SHAH, AGP for Respondent(s):2
RULE SERVED for Respondent(s) : 3,5
MR HS MUNSHAW for Respondent(s) : 4.

Special Civil Application No.4344/2000
MR SHIRISH JOSHI for Petitioner(s) : 1,
MR BS PATEL for Respondent(s) : 1 – 3,
MS ML SHAH, AGP for Respondent(s) : 4.

Special Civil Application No.7958/2000
MR PRAKASH K JANI for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1 - 5.
MR HARIN P RAWAL for Respondent(s) : 6.

Special Civil Application No.13601/1993
MR HARIN P RAVAL for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1 – 4,
MR SL VAISHYA for Respondent(s) : 5.

Special Civil Application No.12341/2000
MR PRAKASH K JANI for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1 – 3
RULE SERVED for Respondent(s): 4,
MR MEHUL H RATHOD for Respondent(s) : 5.

Special Civil Application No.8675/2000
MR VC VAGHELA for Petitioner(s) : 1,
MR SIRISH JOSI for Respondent(s) : 1,
MS ML SHAH for Respondent(s) : 2-4.

Special Civil Application No.8741/2000
MR HARIN P RAWAL for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1 – 3
RULE SERVED for Respondent(s): 4-6,8,
MR BAIJU JOSHI for Respondent(s):7,
MR HS MUNSHAW for Respondent(s) : 9.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/10/2006

ORAL JUDGMENT

1. In the present group of petitions, though there are factual differences, all petitions pertain to the question of grant or cancellation of

registration to Cooperative Societies. Since legal considerations overlap, these petitions were heard together and are being disposed of by this common judgement.

2. Before adverting to individual challenges in these petitions, brief background of these petitions needs to be noted.

3. Under the Gujarat Cooperative Societies Act, 1961 (here-in-after referred to as “the said Act”), provisions have been made for registration of societies and for condition of such registration as well as for registration of the by-laws of the societies. Certain statutory provisions made in the said Act and Rules framed thereunder will be taken note of at a slightly later stage. Suffice it to note, however, at this stage, that number of petitions are received in the High Court by the aggrieved parties either seeking registration, when request has been turned down by the authorities or opposing the registration granted to rival

cooperative societies. Learned advocates appearing for the petitioners had therefore, urged this Court to take into account various factual aspects emerging from these petitions and to provide for some guidelines or directives which would ensure that the procedure which is being adopted is more transparent and fair and is free from misuse and allegations of manipulations.

4. Broadly stated, representation made before this Court on behalf of the petitioners was that despite the provisions made under the said Act and the Rules framed thereunder and despite certain guidelines issued by the Government to regulate the procedure for grant of registration to proposed societies, the present procedure is not free from possibility of manipulation and in large number of cases, the machinery is manipulated to ensure registration of societies whose registration is either not desirable or is aimed only for the purpose of political considerations.

5. Before taking note of submissions and suggestions made by learned advocates appearing for the parties, it would be necessary to briefly take note of statutory provisions as well as Government guidelines governing the field.

5.1 Section 4 of the said Act pertains to registration of the societies and reads as follows :

“4. Societies which may be registered:-
A society, which has as its object the promotion of the economics interests or general welfare of its members or of the public, in accordance with cooperative principles, or a society established with the object of facilitating the operations of any such society, may be registered under this Act:
Provided that it shall not be registered if, in the opinion of the Registrar, it is economically unsound, or its registration may have an adverse effect upon any of the society, or it is opposed to, or its working is likely to be in contravention of pubic policy.”

5.2 Section 6 of the said Act provides for conditions of registration and reads as follows:

“6. Conditions of registration:-

1. No society other than a federal society shall

be registered under this Act unless is consists of atleast ten persons(each of such person being a member of different family) who are qualified to be members under this Act and who reside in the area of operations of the society.

2. No society with unlimited liability shall be registered, unless all persons forming the society reside in the same town or village, or in the same group of villages.

3. No federal society shall be registered, unless it has atleast five societies as its members.

4. Nothing in this Act shall be deemed to affect the registration of any society made before the commencement of this Act.

5. The word 'limited' or 'unlimited' shall be the last word in the name of every society with limited or unlimited liability, as the case may be, which is registered or deemed to be registered under this Act.

Explanation:- For the purpose of this section the expression 'member of a family' means a wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandson, granddaughter, brother, sister, half-brother, half-sister, and wife of brother or half-brother. “

5.3 Section 8 of the said Act pertains to application for registration. It provides inter-alia that for the purpose of registration, the application shall be made to the Registrar in the prescribed form, and shall be accompanied by four copies of the proposed by-laws of the

society. It also provides that the person making such applications shall furnish such information in this regard to the society as the Registrar may require.

5.4 Section 9 of the said Act pertains to registration and provisional registration and Certificate of registration. Section 9 of the said Act reads as follows :

“9. Registration and provisional registration, Certificate of registration:-

1. On receipt of an application for registration from a society-
a) If the Registrar is satisfied that the society has complied with the provisions of this Act and the rules as to registration and that its bye-laws are not contrary to this Act and the rules, he shall register the society and its bye-laws; and
b) If the Registrar is of the opinion that the application complies with the requirements of section 8 but that its bye-laws are not in conformity with the provisions of this Act and the rules, he may provisionally register the society and by an order in wiring permit the society to perform such functions subject to such condition as he may specify in the order and may also by an order in wiring direct the society to amend within the period prescribed in tis behalf its bye-laws so as to bring them in conformity with this Act an the rules.

2. When a society has been provisionally registered, the Registrar shall, on its compliance with the order made under clause(b)

of sub-section(1) finally register it and its bye-laws, and on its failure to comply with the order shall cancel its provisional registration.

3. A provisionally registered society shall not be deemed to be a society registered under this Act.

4. On the registration of a society, the Registrar shall issue to it a certificate of registration signed by him.

5. A certificate of registration issued under sub-section(4) shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration has been cancelled.

6. If the Registrar refused to register the society, he shall forthwith communicate his decision with reasons thereof, to the person who has signed first on the application."

5.5 Section 12 of the said Act pertains to classification of societies and reads as follows:

"12. Classification of societies:-
The Registrar may classify all societies in such manner, and into such classes, as he thinks fit: and the classification of a society under any head of classification by the Registrar shall be final."

5.6 Section 13 of the said Act pertains to amendments of by-laws of societies. Section lays down the procedure for registration of amendments of the by-laws of a society and

provides inter-alia that no amendment of the by-laws of society shall be valid until registered under the Act.

5.7 Section 14 of the said Act pertains to powers of Registrar to direct amendment of by-laws. Sub-section(1) of Section 14 of the said Act inter-alia provides that if it appears to the Registrar that an amendment of the by-laws except in respect of the name or objects of a society is necessary or desirable in the interest of such society, he may call upon the society to make the amendment within such time as may be specified.

5.8 Section 20 of the said Act pertains to cancellation of registration. Section 20 reads as follows :

“20.Cancellation of registration :

1. The Registrar shall make an order canceling the registration of a society if it transfer the whole of its assets and liabilities to another society, or amalgamates with another society, or divides itself into two or more societies, or if its affairs are wound up or it has not commenced business within a reasonable time of its registration or has ceased to function.

2. An order made under sub-section(1) shall be published in the Official Gazette.

3. The society shall, from the date of such order of cancellation, be deemed to be dissolved and shall cease to exist as a corporate body."

5.9 Rule 3 of the Gujarat Co-operative Societies Rules, 1965 (here-in-after referred to as "the said Rules") provides for application for registration. Rule 3 of the said Rules read as follows :

"3. Application for registration:-

Every application for registration of a society under sub-section(1) of section 8 shall be in Form A and shall be accompanied by -

a) a certificate, from the bank or banks stating the credit balance in favour of the proposed society therein.

b) a list of persons who have contributed to the share capital together with the amount contributed by each of them, and the entrance fee paid by them, and

c) the scheme showing the details explaining how the working of the society will be economically sound and, where the scheme envisages the holding of immovable property proposed to be purchased acquired or transferred to the society.

d) Period of amendment of bye-laws under Section 9(1)(b).-The period for the purpose of amendment of bye-laws under clause(b) of sub-section(1) of section 9 shall be three months from the date of the order of the Registrar under the said

clause(b)”

5.10 It can thus be seen that the said Act makes detailed provisions about the registration of the cooperative societies, conditions of registration, regarding the requirements of registration of by-laws, regarding the amendments of by-laws etc. At this stage, it may be briefly noted that Section 4 of the said Act prescribes the requirements of registration of a society and also provides for not registering a society if certain factors in the opinion of the Registrar are existing.

6. By combination of provisions contained in Gujarat Panchayat Act and in particular Section 174 and Section 145 thereof, and certain resolutions issued by the State Government in this regard, these powers of the Registrar for registering a cooperative society under Section 4 of the said Act under different situations have been vested in different authorities. For the purpose of these petitions, it is not necessary to outline in detail, such

resolutions. Suffice to say that the task of examining the applications for registration of various cooperative societies is often performed by the committees constituted for this purpose from the members of the District Panchayats under the provisions of Gujarat Panchayat Act.

7. To better regulate the applications and for providing guidelines for considering the applications for registration of societies, the State Government has been issuing circulars from time to time.

7.1 By a circular dated 14-9-1989, it is provided that as per the provisions contained in Section 6 of the said Act, proposed societies must have a minimum of 10 members who should not be the members of the same family. While considering the applications for registration of society, it should be ensured that this requirement is strictly followed and all 10 members signing the proposal for registration of the society should be belonging to different

families and it should be ensured that this requirement is properly followed.

7.2 By Government Resolution dated 2-3/4/1993, detailed guidelines have been provided for registration of Seva Sahkari Societies, Multi Purpose Cooperative Societies and Farmer's Service Cooperative Societies. Detailed procedure for registering such societies as well as requirements for registering such societies have been laid down in the said Government Resolution.

7.3 In Government Resolution dated 18-21/7/2003, further guidelines have been issued for registration of societies. In the said Government Resolution, it is stated that since sometime it has come to the notice that by the District Registrar or Assistant District Registrar(Panchayat), new Cooperative Societies are registered though there is an existing cooperative society of the same kind in the village. Particularly, instances have been

noticed where such kind of registration have been granted for Seva Sahkari and Multi Purpose Cooperative Societies. This is contrary to the interest of Cooperative movement and is likely to lead to unhealthy competition and thereby weaken the cooperative structure. This leads to internal disputes and increases litigations. It is further stated that the District Registrar and District Panchayats have been given powers for registration of societies. They should ensure the guidelines and norms laid down for such registration and ensure that in the same village, in the same category, not more than one society be registered. Particularly, Seva/ Milk/Labour/General Agricultural Cooperative Societies have been created carefully for benefits of the members and it should be examined whether the same is beneficial or not. It should be ensured that the societies are not being registered at the instance of vested interests or commercial elements to utilise such societies for their personal gain.

7.4 On the basis of different circulars issued by the State Government providing for guidelines for registration of societies and laying down norms for registration and different categories of societies, as per the details supplied by the learned AGP Ms. M.L. Shah, following situation emerges :

“Standing orders are issued time to time for the registration of Cooperative Societies under Gujarat Sate Cooperative Societies Act, 1961, Coordinating all previous standing orders/circulars, the following standing orders are hereby issued for the registration of above societies.

(1) As per the provision of Cooperative Societies Act, Chief Promoters should be from different families and should be qualified to be a member of the society.

(2) The bye-laws of the proposed societies should be in accordance with the provisions of the Gujarat State Cooperative Societies Act, 1961 and its rules of 1965. The ineffective and illegal provisions of the bye-laws should be deleted from the proposed bye-laws.

(3) For the registration of the above societies there should be sufficient evidence to establish the residence and operation of agriculturist in the concerned rules. In this case instead of providing evidence of all farmers certificates separately, the certificates issued by Talati's respective village along with he farmers list may be considered.

(4) In lieu of the certificate issued by Sarpanch of respective villages, the certificate issued by the Govt. Labour Officer, or the

Director of Agriculture, District Panchayat as Rural Workers or Agricultural laborers.

(5) The District or Director of Agriculture, District Panchayat or Registrar may ensure that the procedure for granting of the sanction by the Direct Supervision Committee may be completed within three months.

(6) On receipt of the proposal for registration of the societies, all queries regarding non fulfilling the preliminary conditions of the Act/Rules should be informed at once to the Promoters so as to avoid unnecessary correspondence and after the receipt of re-proposal the decision should be taken within three months.

The proper guidelines and essential informations for the registration of the societies should be provided from the competent authority for taking the decision easily of the proposal for the registration of the societies within three months."

8. At this stage it would be useful to take note of some of the provisions contained in Gujarat Agricultural Produce Markets Act, 1963. Section 11 of the Gujarat Agricultural Produce Markets Act provides for Constitution of Market committee. Section 11 of Gujarat Agricultural Produce Markets Act in so far as same is relevant for our purpose reads as follows :

"11. Constitution of market committee-

(1) Every market committee shall consist of the following members, namely:-

(i) eight agriculturists who shall be elected by members of managing committees of cooperative societies (other than cooperative marketing societies) dispensing agricultural credit in the market area.

(iii)two representatives of the cooperative marketing societies situate in the market area and holding general licenses, to be elected from amongst the members (other than nominal, associate or sympathiser members) of such societies by the members of the managing committees of such societies:

Provided that where the number of cooperative marketing societies so situate does not exceed two, only one representative shall be so elected;"

8.1 It can thus be seen that as per clause (i) of Sub-section(1) of Section 11 of the Gujarat Agricultural Produce Markets Act, eight agriculturists who shall be elected by the members of the managing committees of cooperative societies dispensing agricultural credit in the market area become the members of the Agricultural Produce Market Committee. Similarly as per clause(iii) of Sub-section(1) of Section 11 of the Gujarat Agricultural Produce Markets Act, Cooperative Marketing Societies situate in the market area and

holding general licenses also send two representatives in the Market Committee.

9. On the basis of above statutory provisions and Government guidelines, it was represented before this Court by the learned advocates appearing for the petitioners that in large number of cases, provisions for registration of cooperative societies receive different interpretations leaving scope for allegations of discrimination. From the basis of facts emerging from these petitions, it was sought to be canvassed that certain procedures, safeguards and guidelines are required to be laid down to ensure that the authorities while considering the question of registration of societies, uniform policy is adopted. It was contended that sometimes only to inflate the voters list for the purpose of electing members of managing committee of Agricultural Produce Market Committees that bogus cooperative societies are floated. It was further submitted that sometimes certain societies enjoy membership of federal

societies and for elections of such federal societies, registration of primary level societies also play important role.

10. Learned advocate Shri P.K. Jani appearing for some of the petitioners pointing out the provisions contained in Section 174 of the Gujarat Panchayat Act read with Section 145 thereof, submitted that powers are vested with the committees constituted under the District Panchayat for consideration of applications for registration of societies. Drawing my attention to Section 11 of the Gujarat Agricultural Produce Markets Act, he submitted that since as many as eight representatives of cooperative societies are to be nominated through election for Agricultural Produce Market committee, often times societies which are otherwise not serious in their operation are created. He also submitted that some of the cooperative societies also enjoy voting rights in the federal society of which such primary level societies are members for which purpose also sometimes such

societies are created.

10.1 He drew my attention to the decision of this Court in the case of B.B. Shroff & anr. v. Sardar Bhilandwala Pardi People's Co.op Bank ltd. reported in 1981(22)GLR 805, wherein learned Single Judge of this Court observed in paragraph 6 as follows :

"6. In the instant case, the petitioner society is a banking cooperative society and so is the first respondent society. The grievance of the petitioner -society is that by registering the amendment of the by-laws, which extends the area of operation of the first respondent society to the area in which the petitioner -society is already operating, there will be unhealthy competition. This is as relevant aspect to be consider, if true. The attention of the authority registering the amendment was required to be focused upon this aspect of the matter and the decision with regard to registration of the amendment of the by-laws could only have been arrived at after it was found, upon investigation of all the relevant facts and circumstances, that the registration of the amendment of the by-laws extending the area of operation is not likely to have an adverse effect upon the petitioner-society and to undermine the cooperative principles in general. The order of the original authority being not before me, it is not possible to ascertain whether this perspective was kept in mind. The order of the appellate authority does not disclose that this perspective was present to its mind. Under the circumstances, the conclusion is inevitable that the power with regard to registration of the amendment of the by-laws is exercised without applying mind to

the most relevant aspect and to the fundamental questions which were required to be taken into account."

10.2 Reliance was placed on the decision of learned Single Judge of this Court in the case of Hirabhai Vashrambhai Desai v. State of Gujarat & ors. reported in 1998(1)GLR 53, wherein learned Judge observed that if the Registrar feels that it will be economically unsound to have more than one cooperative society in an area, he may refuse registration.

10.3 He also pointed out the decision of learned Single Judge of this Court in the case of Nandotra Dudh Utpadak Sahakari Mandali Ltd. v. State of Gujarat reported in (2004) 5 GHJ 4, wherein Learned Judge observed that "in the present case, as observed earlier, the petitioner society has made huge investment of about Rs. 17 lacs, not only that but if out of 365 suppliers of milk 80 are excluded it will have direct bearing on the functioning of the turnover of the petitioner-society. Moreover, in a small village like Nandotra having population

of 3182 normally if one society is maintained, it would create not only harmonious atmosphere but would also promote the economic interest of other members and the village.”

10.4 On the basis of above judicial pronouncements and statutory provisions learned advocate Shri P.K. Jani submitted that very often different standards are applied by the registering authority as well as Additional Registrar as Appellate Authority and State Government as Revising Authority. He therefore, submitted that the discretion in the State Government Authority should not be so wide as to permit unlimited variations.

10.5 He further submitted that existing society in the same area operating in the same field should have a right of being heard before registration is granted in favour of rival proposed society.

10.6 He submitted that such registrations

are granted in absence of existing society and such existing society does not even have information about such registration being granted thereby leading to harm and prejudice being caused to such societies without even permitting the existing society to put forth its objections.

11. Learned advocate Shri Shirish Joshi appearing for some of the petitioners submitted that Section 4 of the said Act itself provides for sufficient guidelines for consideration of cases of applications for registration of societies and no straight jacket formulae can be provided.

12. Learned advocate Shri Harin P. Rawal submitted that the guidelines are inbuilt in the provisions of the statute itself. Its implementation however, is faulty and it should be ensured that parameters laid down by the Legislature as elaborated by the State Government in its different circulars should be scrupulously adhered to. He submitted that for

the above purpose, the Registering authority should adopt a fair procedure. He submitted that in cases where there is no existing society of a kind in a village or area and where two applications, either simultaneously or in close proximity of each other are made, the authorities adopt different standards for considering such applications.

12.1 He drew my attention to the provisions contained in Section 5 of the Bombay Cooperative Societies Act which governed the field till the said Act was enacted and submitted that the provisions contained therein as compared to the provisions of Section 4 of the said Act are somewhat different and for valid reasons, the legislature has provided for proviso in Section 4 of the said Act which was not there in the previous legislation. He in fact submitted that the powers of Registering authority should not be unduly curtailed as under Section 20 of the said Act, it is always open for the authorities to cancel the registration of the society once

granted for reasons contained therein or to wind up a society under Section 107 of the said Act if found necessary.

13. Learned advocate Shri V.C. Vaghela submitted that registrations are often considered on political grounds. The provisions contained in the said Act and Government guidelines are not properly followed. The Committees of the Panchayat often ignore adverse reports against the registration of society and overrule such reports without any material or recording of reasons.

14. Learned AGP Ms. M.L. Shah on the other hand submitted that Section 4 of the said Act itself provides for broad guidelines for consideration of applications for registration. Further insight is provided in Section 6 and Section 9 of the said Act. Section 6 pertains to conditions of registration and Section 9 pertains to registration and provisional registration of the said Act. She further

submitted that one of the basic principles of cooperative movement being cooperation amongst cooperatives, this Court should not unduly restrict the scope of registration of new societies. She submitted that State Government has also in an endeavour to regulate the procedure, issued guidelines from time to time. These guidelines broadly provide for meeting for different situations and no further guidelines covering all situations can either be provided or envisaged.

14.1 She further submitted that there are at present as many as 59,000 Cooperative Societies registered and operating in the State. Out of large number of applications dealt with for registration of societies, therefore, only a handful of cases reach this Court. From such few cases, fact of political maneuvering cannot be deduced. She further submitted that to permit the cooperative movement to flourish, it is necessary that in given set of circumstances, new societies be registered. No straight jacket

formulae can be laid down wherein in the same area of existing cooperative society, under no circumstances, new cooperative society can be registered.

15. Having heard learned advocates appearing for the parties, it would appear that there is a degree of unanimity about the proposition that the provisions contained in the said Act and in particular Section 4 thereof, broad guidelines for considering the applications for grant of registration of societies are already existing. To regulate the procedure further, Government has also as noted above provided for further guidelines. Section 4 of the said Act provides that society which has as its object the promotion of the economic interests or general welfare of its members or of the public in accordance with cooperative principles or the society established with the object of facilitating the operations of any such society, may be registered under the Act. Proviso to Section 4 of the said Act further provides that

however, such a society shall not be registered if in the opinion of Registrar, it is economically unsound or its registration may have an adverse effect upon any other society, or is opposed to, or its working is likely to be in contravention of public policy. Thus Section 4 of the said Act besides providing for requirement of registration of a society further provides that even if a proposed society fulfills its requirement, it will still not be registered if any of the conditions provided in the proviso are existing. Therefore, a society which is economically unsound or its registration is likely to have an adverse effect on any other society or it is opposed to, or its working is likely to be in contravention of public policy would not deserve registration. Section 6 of the said Act further provides for requirement of conditions of registration. Section 9 of the said Act pertains to registration and provisional registration of a cooperative society. It inter-alia provides that if the Registrar is satisfied that the society

has complied with the provisions of the Act and Rules as of registration and that its by-laws are not contrary to the Act and Rules, he shall register the society and its bylaws as per the provisions of Section 9 of the said Act. Therefore, before registering the society, the Registrar has to satisfy himself about the society complying with the provisions of the Act and Rules for registration and also that the by-laws are not contrary to the Act and Rules. Thus detailed provisions have been made under the said Act to govern the application for registration of society. In addition thereto, Government has also laid down broad parameters and guidelines for considering such applications. For different categories of societies, different parameters and guidelines have been laid down. To ensure that there is no unhealthy competition and to ensure that registration of a society does not adversely affect the existing society, in Government Resolution dated 21-7-2003, it is provided that care should be taken not to register a society

in the same village or area where another society operating in the same activity is already registered. This Government Resolution however, does leave some scope of discretion and in a given case, it would be still open for the Registering authority for valid reasons to register yet another society despite a society already existing in the same village or area.

16. It can thus be seen that sufficient safeguards and guidelines for consideration of applications for registration of society are already available in form of statutory provisions as well as Government guidelines.

16.1 It is neither possible nor permissible to lay down a straight jacket formulate to be applied with mathematical exactitude to apply in all cases. There are different kinds of situations, different kinds of societies and there are different fields in which such cooperative societies operate. All circumstances which emerge or which may emerge are impossible

to be foreseen and no straight jacket formulae can be provided for whereby discretion of the authority is taken away completely.

17. However, despite these guidelines emerging from statutory provisions as well as State resolutions, one fact cannot be ignored that there are allegations of differential treatment and discriminatory approach. The concern voiced by learned advocates for the petitioners that sometimes such registration are misused for the purpose of inflating voters list also may not be completely baseless. Cooperative movement in India is largely State aided and regulated by the Statute. In case of Zoroastrian Co-operative Housing Society Ltd. and another v. District Registrar, Cooperative Societies (Urban) and others reported in AIR 2005 Supreme Court 2306, though Hon'ble Supreme Court gave a fillip to the concept of right to form association and to be governed by a set of rules that the members of the Association may choose, nevertheless, recognised that such rules(by-laws) of the

society must confirm to statutory provisions. Over a period, cooperative movement has gained momentum and cooperative sector operates in vast areas. Some of the cooperative societies have significant operations and sizable membership strength. State funds are also involved in number of societies. Involvement of the State on account of its financial stake as well as larger public interest is therefore, inevitable. The provisions are therefore, found in the said Act permitting the State intervention. Legislative and State intervention however, cannot be confused with political interference and it would always be desirable that cooperative movement to the extent possible enjoys insulation from political consideration.

17.1 Thus even while recognising that the existing statutory provisions as well as Government guidelines provide sufficient safeguard for consideration of applications for grant of registration of societies to ensure that the implementation of such guidelines is

fair and that procedure is transparent, certain directives are necessary.

18. While hearing these petitions, it is found that large number of cases arise out of existing societies opposing the registration of proposed societies in the same area. At the time when Registering authority is considering such applications, existing societies are not granted any hearing. Eventually, when registration is granted to a new society, existing societies carry the issue further in appeal and revision. The appeal and revision are entertained at their instance and this Court also has been entertaining the petitions at the instance of such societies. Thus by necessity as well as convention, locus standi of such existing societies to question grant of registration to a new society has been recognised. Such societies however, enjoy no right of being heard before the applications of rival societies are permitted. To my mind, this is somewhat of contradictory situation. If an

existing society has right to appeal against the registration granted to a new society, such society must also have a right to be heard before the application of new society for registration is granted. This would be in consonance with the principles of natural justice. This would also be in larger interest since such society would be, at the outset, in a position to place material on record for consideration of Registering authority. As already noted section 4 of the said Act provides that if in the opinion of the Registrar, registration of a society may have an adverse effect upon any society, it shall not be registered. This aspect has been further highlighted in Government Resolution dated 18-7-2003. It is provided inter-alia that it should be ensured that in the same village in the same category not more than one society should be registered. This rule is not inviolable and for good reasons exceptions can be made particularly if it is found that registering another society would have no

adverse effect on the existing society. Nevertheless, existing society would have a right to place material on record and be heard to establish before the authorities that such registration should not be granted.

18.1 Considering these aspects of the matter, it would be appropriate to permit the existing societies operating in the same field to raise their objections and to be heard (not necessarily in person) before applications of new societies (covered under said Government Resolution dated 18-7-2003) in the same village/group villages are decided by the Registering authority.

19. Above situation would however, arise only in cases where primary village level societies are fighting for registration. In large number of cooperative societies at different levels however, such a situation may not arise. In such other cases also, question of adverse effect on existing society would arise. It would be

desirable if the objections of other societies which are likely to be affected are taken into consideration by the Registering authority before taking a final decision regarding registering of a new society. For the above purpose since it would not be possible to identify the society which may face ultimate adverse effect, it would be appropriate that the Registering authority upon receipt of application for registration of a new society exhibits a copy of such application on a prominent place in the office for a period of 10 days which would enable other societies to raise their objections, if any. In response to such exhibiting of notice, if any objections are raised before the Registering authority, same should be taken into account before deciding the application for registration of a new society. It is however, made clear that only by virtue of raising objections, the objector would not ipso facto enjoy a right to be heard or appeal against the order which may be passed and such rights will be governed on the basis of facts

arising in individual cases.

20. I have also noticed that though almost invariably the appellate orders as well as State orders are speaking orders, orders granting or refusing registration to the societies do not indicate any reasons.

21. In a decision dated 5-7-2006 in Special Civil Application No.6381/1998 and connected matters, this Court with reference to requirement of giving reasons made following observations :

> “17. The upshot of the above discussion would be that the Government should be asked to formulate and publish its policy for consideration of special cases for conversion of non-grant-in-aid school into grant-in-aid school. The respondents should apply such policy in future in all cases uniformly subject of course to budgetary allocations. This is however not to suggest that such policy must remain constant or stagnant. For valid consideration to meet with different requirements to adopt to changed circumstances, it would always be open to the Government to modify the policy through subsequent GRs. Since it is found that in case of these petitioners, their applications have been turned down by the respondents time and again solely on the ground that they had at one stage agreed not to avail of grant while number of other institutions who had also given such undertakings were given grant, I find it

appropriate that the Government should indicate its reasons for considering such applications in future. This would minimize the possibility of any discrimination as also enable the higher authorities or the courts to examine the reasons which weighed with the Government or its authorities in either granting or refusing such conversion. It would, therefore, be necessary that while dealing with, deciding and disposing of such applications, either accepting or refusing conversion, the authorities should record its reasons, however, brief the same may be. Observations made by the Hon'ble Supreme Court in the case of Mohinder Singh v. Chief Election Commissioner, reported in AIR 1978 SC 851 may be noted.

> "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):
>
> "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".
>
> Orders are not like old wine becoming better as they grow older."

22. In the present case also, I find that the

Registering authority should record, however briefly, the reasons either for grant or refusal of registration. This would ensure a degree of transparency in deciding the applications and will also enable higher authority/Court to properly appreciate the order passed by the Registering authority.

23. One more question that still calls for consideration is regarding simultaneous applications of two proposed societies in the same area. As noted earlier, authorities sometimes adopt the policy of giving preference to application which is earlier in point of time. Sometimes applications received later get earlier consideration and once registration is granted, applications of rival proposed society automatically fails. To my mind neither of these policies are fair or just. Simply attaching importance to the date of application would not be legally permissible. At the same time granting application to one society without considering the rival claim would also

be equally unjust. In all such cases, not the date of application for registration, but merits of the claim for registration should receive precedence. The Registering authority therefore, in such cases shall have to weigh the rival claims and grant registration to such a society which is most likely to serve the cooperative principles and be in the interest of the population of the village or the area and otherwise fulfill the requirements under the act.

24. It is also brought to the notice of the Court that in some cases societies are created and registered with the sole purpose of inflating voters lists for the elections of Agriculture Produce Market Committees or Federal Societies. Such societies mushroom at the election time but are not operation at all. Continued registration of such societies block creation of new societies and hamper spread of cooperative movement. To my mind, if there are societies which exist only on paper and are really not

functional, their registration should be cancelled as early as possible. A defunct society cannot be allowed to prevent creation of a new society genuinely interested in serving the need of the people. It would therefore, be appropriate that Registrar Cooperative ensures that complaints of such kind are promptly examined and appropriate decision as may be found necessary in accordance with law is taken. For this purpose the Registrar may even consider setting up a special cell if number of such complaints are large.

25. With these general guidelines and directions, it would be necessary to take up individual cases for consideration.

Special Civil Application No. 15560/2003

26. The petitioner herein is a cooperative society involved in milk collection. It is duly registered under the provisions of the said Act. It is situated in a village called Vachhol which at the relevant time had a population of 2849

persons. The petitioner-society enjoyed membership of 221 members. The society was registered on 31-3-1997. The petitioner-society came to know about the movement to register another society namely respondent no.5 herein. A resolution was therefore, passed by the petitioner-society to oppose such registration. A representation was also made to the District Registrar on 24-9-2002. The petitioner-society also tried to file a caveat. However, without considering the objections of the petitioner, registration was granted in favour of respondent no.5. The petitioner society therefore, preferred an appeal before the Additional Registrar. The appeal was allowed by the Additional Registrar on 30-6-2003. In the appellate order, it was recorded that there is no requirement of registering another society. Considering the small population of the village, registration of second society is not desirable. District Milk Union has not given no objection for registration of new society. On this ground, the Additional Registrar was pleased to allow

the appeal of the petitioner-society.

26.1 The respondent no.4 and 5 herein preferred a revision application before the State Government which was allowed by an order dated 15-10-2003. The State Government observed that village Navapura where the new society is situated is at a distance of 2 km. from Vachhol. It was observed that once registration is granted, the same cannot be cancelled only under Section 20 of the said Act if grounds are existing.

26.2 Having heard learned advocates appearing for the parties, and having perused the material on record, I find that the order passed by the State Government cannot be sustained. Even the State Government records that Navapura is an extension of village Vachhol. About the averment of the petitioner that village had population of only about 2800 persons is not seriously in dispute. The State Government was exercising revisional powers.

Unless the Government was of the opinion that the decision of the Additional Registrar was not legal or proper, it ought not to have interfered in the matter. Additionally, I also find that the observation that once registration is granted, same cannot be recalled only under Section 20 by cancelling if grounds are existing is not valid. Before the Additional Registrar, the petitioner had challenged the order passed by the Registering Authority granting registration and it was not cancellation of registration already granted.

26.3 Considering all these aspects of the matter, I find that petition is required to be allowed. The impugned order dated 15-10-2003 passed by the Government is quashed. The petition is disposed of accordingly. Rule made absolute.

Special Civil Application No.3900/1997.

27. In this petition, the petitioner has challenged an order dated 13-5-1997 passed by the State

Government in exercise of powers under section 155 of the said Act. By the said order, the Government was pleased to reject the revision application filed by the petitioner against the order of the appellate authority. The appellate authority i.e. the Additional Registrar had allowed the appeal of respondent no.3 herein for grant of registration. In the appellate order, Additional Registrar had taken into account all aspects of the matter and granted conditional registration to respondent no.3-proposed society. He found that registration of a new society will not have adverse effect on the existing society. First condition for registration was that from the existing cooperative societies, no members will be enrolled by the new society. In future also none of the defaulting members of the existing society will be enrolled and before admitting the members, NOC of the concerned societies will be obtained. Second condition was that every person will be eligible to be a member of only one society and if a member who wants to join

another society, he shall have to resign from his earlier society and shall have to produce certificate of no dues and NOC before getting new registration. Additional Registrar having taken proper care to ensure no adverse effect on the existing society and State Government having upheld the order, in writ jurisdiction, I do not find it necessary to interfere with the same particularly when no specific instances of adverse effect have been brought to the notice of the Court nor is it pointed out that the population of the village is so small that it cannot accommodate more than one society. In fact it has come on record that population of village at the relevant time was 12,277.

27.1 Considering all these aspects of the matter, the petition is required to be and is hereby rejected. Rule is discharged.

Special Civil Application No. 9547/1996

28. The petitioner herein challenges an order passed by the State Government on 13-11-1996 in

revision application filed by the respondent no.1 herein. The petitioner society as well as respondent no.1 applied for registration of the multi purpose cooperative society in the same village. The Registering authority granted application of the petitioner on 30-5-1996. The appeal filed by respondent no.1-herein was rejected by the Additional Registrar on 16-8-1996. The respondent no.1 therefore, approached the State Government by filing revision application. This revision application was partly allowed. The proceedings were remanded to he District Panchayat for fresh consideration.

28.1 I have heard learned advocates appearing for the parties and perused the material on record. The order passed by the Additional Registrar granting registration to the petitioner-society has been operated and implemented since inception. Even while admitting this petition, this court had granted stay and society is functioning right since

1996. The respondent no.1 if he had any grievance at the relevant time has not actively voiced the same before this Court. No one has appeared on behalf of respondent no.1. No reply has also been filed.

28.2 Considering all these aspects of the matter and taking into account totality of facts and circumstances of the case, I do not find that any useful purpose would be served, at this stage, to permit the order of remand to be operated. For over 10 years, the petitioner-society has functioned to the preference of respondent no.1. Remanding the proceedings at this stage would only cause further delay and prejudice.

28.3 In the result, the impugned order dated 13-11-1996 is quashed . The petition is allowed. The petition is dispose of accordingly. Rule made absolute accordingly with no order as to costs.

Special Civil Application No. 4344/2000

29. In this petition, the petitioner has challenged an order dated 29-1-2000 passed by the Additional Registrar as well as order dated 27-4-2000 passed by the State Government. The petitioner is a Credit Cooperative Society. The Registering authority granted registration as requested for by the petitioner on 5-11-1999. The respondents no.1 to 3 filed an appeal against the order of registration. The respondents no. 1 and 2 are Cooperative banks and respondent no.3 is a credit society. The appeal filed by the said respondents was allowed by the Additional Registrar on 29-1-2000. The petitioner therefore, approached the State Government and filed a revision application which was however, rejected on 27-4-2000.

29.1 Having heard learned advocates appearing for the parties and having perused the material on record, I find that though the Additional Registrar was justified in upholding some of the objections of the concerned

respondents, issues required reconsideration at the hands of Registering authority. The State Government also instead of remanding the proceedings upheld the order passed by the appellate authority. I find that both the authorities came to the conclusion that objections of respondents no 1 to 3 should have been taken into consideration before granting registration to the petitioner under Section 4 of the said Act. If that be so, proper course to be adopted was to remand the proceedings and not to completely non suit the petitioner. It was necessary that the Registering authority take into account all objections against granting of registration in favour of the petitioner and take decision in accordance with law.

29.2 In the result, the appellate as well as revisional orders are quashed. The proceedings are remanded to the Registrar for fresh consideration in accordance with law after giving an opportunity to the petitioner as well as to respondents no. 1 to 3 to place the

material on record. Such consideration should be expeditious and proceedings should be completed within a period of four months from the date of receipt of a copy of this order.

29.3 The petition is disposed of accordingly. Rule made absolute to the above limited extent accordingly with no order as to costs.

Special Civil Application No. 7958/2000.

30. This petition has longish history. The petitioner herein is opposing the registration of respondent no.6. The petitioner claims that both societies are operating in a village with a population of 1700 persons. It is the case of the petitioner that village Hadta is part of Rampara group of villages where Rampara group of Seva Mandali is operating. On 29-6-1998, the application for registration of petitioner-society was granted by the committee and the application for registration of respondent no.6 was rejected. Respondent no.6 therefore,

preferred an appeal before the Additional Registrar. By an order dated 12-10-1998, the appeal of the respondent no.6 was partially allowed. The proceedings were remanded for reconsideration after hearing both the parties. The petitioner preferred a revision application before the State Government on 8-1-1999. The revision application was allowed on 27-1-1999. However, in the meantime since the order passed by the Additional Registrar was not stayed, the Committee under the District Panchayat was convened and decided to grant registration in favour of respondent no.6 on 24-12-1998. The respondent no.6 being aggrieved by the order passed by the State Government on 27-1-1999 preferred the petition before this Court being Special Civil Application No.1042/1999. This petition was allowed partially by decision dated 15-2-2000. The proceedings were remanded to the State Government for fresh consideration upon which the State Government passed fresh order on 6-6-2000. Government rejected the revision application of the petitioner and also approved

the order passed by the Registering authority by the said order dated 6-6-2006. It is not in dispute that in the meantime, the petitioner had also challenged the order of registration granted in favour of respondent no.6 by the Committee on 24-12-1998 before the Additional Registrar.

30.1 It can thus be seen that while disposing of the revision application of the petitioner upon remand, the State Government by impugned order dated 6-6-2000, not only rejected the revision application of the petitioner in which challenge was to the earlier order passed by the Additional Registrar on 12-10-1998 remanding the proceedings to the committee, it also effectively rejected the appeal of the petitioner which was pending before the Additional Registrar challenging the order of registration granted by the Committee in favour of respondent no.6.

30.2 To my mind to the extent the State

Government nullified the appeal of the petitioner before the Additional Registrar in which challenge was made to the order of the committee granting registration to respondent no.6, was not permissible. The Government was considering the revision application of the petitioner and deciding whether the decision of the Additional Registrar remanding the proceedings before the Committee was valid or not while doing so Government could not have adjudicated upon the pending appeal of the petitioner before the Additional Registrar.

30.3 In the result, the petition is required to be and is hereby partially allowed. Order dated 6-6-2000 passed by the State Government though in so far as same rejects the revision application of the petitioner is concerned is upheld, in so far as same pertains to upholding the order passed by the Committee is however, set aside. The appeal of the petitioner filed before the Additional Registrar challenging the order of the Committee dated 24-12-1998 is

revived and restored to file. Additional Registrar shall hear the appeal expeditiously and dispose of the same preferably within a period of four months from the date of receipt of a copy of this order.

30.4 The petition is disposed of accordingly. Rule made absolute to the above extent with no order as to costs.

Special Civil Application No.13601/1993

31. In this petition, the petitioner-society has challenged an order passed by the State Government on 11-10-1993 by which the revision application of respondent no.5 came to be allowed. The petitioner had applied for and was granted registration by the Registering authority. The appeal filed by respondent no.3 was also rejected by the Additional Registrar. In the revision application however, State Government by impugned order set aside the orders passed by the authorities below. The

petitioner has therefore, approached this Court in the present petition.

31.1 While admitting the petition, stay was granted in favour of the petitioner right from inception therefore, petitioner continued to enjoy the fruits of registration. More than 13 years have passed since this petition has been admitted. In fact registration order was granted in favour of the petitioner in the year 1991. Thus, I do not find any reason to recall such order of registration. It may also be noted that two authorities below had held in favour of the petitioner and only in exercise of revisional powers, State Government found it appropriate to interfere. One additional ground which convinced me not to upset the current position is that respondent no.5-society has not put up any resistance in this petition. No reply has been filed. Though society engaged an advocate, no one has remained present on behalf of the society.

31.2 Considering all these aspects of the matter, impugned order dated 11-10-1993 passed by the State Government is quashed. Order passed by the Additional Registrar and District Registrar are restored.

31.3 The petition is allowed. The petition is disposed of accordingly. Rule made absolute accordingly with no order as to costs.

Special Civil Application No.12341/2000

32. The petitioner has challenged an order dated 10-8-2000 passed by the Additional Registrar as upheld by an order dated 19-9-2000 passed by the State Government. The petitioner-cooperative society applied for grant of registration. The Registering authority granted registration. The respondent no.5 however, challenged such registration before the Additional Registrar. The Additional Registrar in his impugned order allowed the appeal. In the said order it was observed that there is some discrepancy in the order of registration regarding mentioning of

word “proposed”. It was observed that apparently the application for registration was granted without proper verification and scrutiny. The revision application of the petitioner was turned down by the Government accepting the order passed by the Additional Registrar.

32.1 Having heard learned advocates appearing for the parties, I find that if the Additional Registrar had any doubt about the procedure adopted by the Committee for grant of registration, issues could have been and should have been remanded for reconsideration and examination of proper material. It would therefore, be appropriate that application be reconsidered by the Registering authority taking into account all facts and circumstances including the present position. For the above purpose, appellate order as well as revisional order are quashed. The proceedings are remanded to the Registering authority for fresh consideration and decision in accordance with

law after hearing the petitioner as well as respondent no.5.

32.2 In the result, the petition is allowed. The petition is disposed of accordingly. Rule made absolute to the above limited extent with no order as to costs.

Special Civil Application No.8675/2000

33. The petitioner herein challenges an order dated 9-2-1999 passed by the Additional Registrar granting registration in favour of respondent no.1-society. The petitioner also challenges an order dated 31-12-1999 passed by the State Government rejecting the revision application of the petitioner. The petitioner is an existing cooperative society and opposes registration of respondent no.1-society in the same area. In the impugned order, the Government observed that the respondent no.1-society is operating only in the area of Nava Anganvada village. It is also recorded that the petitioner has given NOC for registration of the new society.

33.1 Learned advocate for the petitioner points out that there is no separate village of Nava Anganvada and there is only one village of Anganvada. He also pointed out the averments made by the petitioner that observation that NOC was granted by the petitioner is factually inaccurate.

33.2 To both these aspects of the matter, there is no clear rebuttal on record. In any case, these are issues which need to be properly gone into. If the petitioner had not given NOC, the revision application could not have been rejected on this ground. Whether Anganvada and Nava Anganvada are two separate revenue villages or not is also a dispute which needs to be properly taken into account. For this purpose, it would be necessary to remand the proceedings to the Registering authority. Despite the objection by respondent no.1, that since respondent no.1-society is enjoying registration since 1998, the same should not be upset, I find

that in facts of the present case, since the orders passed by the authorities are on the basis of factual conclusions which the petitioner prima facie demonstrates to be inaccurate, it is necessary that entire issues be reconsidered. Learned advocate for respondent no.1 placed reliance on the decision of learned Single Judge of this Court dated 19-8-2004 in Special Civil Application No. 10468/2000 in which learned Single Judge was pleased to observe the fact that respondent no.1-society is functioning since about four years, may result into inconvenience to the members of the society. However, this cannot be the sole consideration and in facts of the case, I do not find that same would govern the situation. However, since respondent no.1 is operating with valid registration since 1998, till the remand proceedings are concluded , it will continue to enjoy such registration as is presently being done.

33.3 Subject to above observations, the

petition is allowed to the above limited extent. The petition is disposed of accordingly. Rule made absolute accordingly with no order as to costs.

Special Civil Application No.8741/2000.

34. In the present petition, the petitioner challenges an order dated 2-8-2000 passed by the State Government in revision application filed by respondent no.7. The respondent no.7 herein also desired for registration in the same area in the same field of activity. The application of respondent no.7 was accepted by the authorities on 4-5-2000. The petitioner preferred appeal before the Additional Registrar. The appeal of the petitioner being Appeal No.77/2000 was allowed by an order dated 21-6-2000. The registration of respondent no.7 was cancelled. The respondent no.7 therefore, preferred revision application before the State Government. The State Government allowed the revision application on 2-8-2000. The petitioner had therefore, preferred this petition before

this Court.

34.1 While admitting the petition, no stay has been granted in favour of the petitioner. In the impugned order, State Government records that on behalf of the petitioner its chief promoter had committed many irregularities in the proposal of the petitioner. Taluka Development Officer had not signed at all. Apparently, signature was fabricated. Along with the application, there was an affidavit of one Shri Motiji Jatt, the promoter of the society which was produced only on 27-1-2000. It was also found that the application for registration of the petitioner was never recorded in the inward register. Additional Registrar also came to the conclusion that signature of Taluka Development Officer was fabricated despite which these facts were ignored and appeal of the petitioner was allowed. The Government therefore, found that the revision of respondent no.7 should succeed.

34.2 I have no reason to dislodge the findings of fact arrived at by the Government. If there were major discrepancy and irregularities in the application of the petitioner for registration, the same could not have been overlooked by the Additional Registrar. The Government therefore, correctly exercised revisional powers and interfered with the appellate order. No interference is therefore, called for.

34.3 The petition is therefore, rejected. Rule is discharged with no order as to costs.

35. Additionally, the Government is directed to ensure that observations and directions contained in paragraph 18 to 25 of this judgement are implemented.

(Akil Kureshi, J.)

(raghu)